



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR96-0095

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37582.

The Texas Department of Criminal Justice (the "department") received a request for the autopsy report, all medical records, and the investigative report concerning the death of an inmate, the requestor's brother. The requestor also seeks the names of the inmates who killed her brother and whether there were any procedures the warden did not follow that could have prevented the incident from occurring. You state that you have released the medical records to the requestor. You also state that the requestor has been provided a copy of the autopsy report and newspaper clippings. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. You have submitted samples of the information requested.¹ We have considered the exceptions you claimed and have reviewed the sample documents.²

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²Although the department originally claimed that the requested information is excepted from disclosure under section 552.111 of the Government Code, the department did not offer any arguments

Section 552.108(a) excepts from disclosure records of law enforcement agencies or prosecutors that deal with criminal investigations and prosecutions. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986). You state that there is an open criminal investigation into the death of this inmate. Therefore, with the exception of information that would typically appear on the first page of an offense report, the department may withhold the remainder of the requested information.

We note that one of the documents submitted to this office for review is a custodial death report. Section I of that report is public by law and we presume that the department either has made available or will make available that section of the report to the requestor. See Code Crim. Proc. art. 49.18; Open Records Decision No. 521 (1989).³

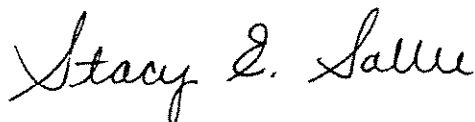
(Footnote continued)

as to why this exception would apply to any of the requested information. Therefore, we consider this exception waived. Gov't Code §§ 552.301, 552.303.

³The department also claims that section 552.117 of the Government Code excepts the home addresses, home telephone numbers, and social security numbers of department employees from disclosure. We note that the department did not timely raise section 552.117. Therefore, a presumption of openness arises. Open Records Decision Nos. 552 (1990), 319 (1982). However, this presumption may be overcome on a showing that a compelling reason exists to withhold the requested information. Open Records Decision Nos. 552 (1990), 319 (1982). We believe that section 552.117 is a compelling reason to overcome the presumption of openness and will therefore consider this exception. As the department is no doubt aware, section 552.117 was amended in the last legislative session to remove the automatic exemption for department employees. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Sess. Law Serv. 5127, 5132 (Vernon) (codified as Gov't Code § 552.117). Therefore, only if the employees have made the election to keep this information confidential under section 552.024 prior to the receipt of the request or if the employees are "peace officers" as defined by article 2.12 of the Code of Criminal Procedure must the department withhold this requested information. Otherwise, the department may not withhold this information. We note that we did not see any of this information in the submitted materials.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 37582

Enclosures: Submitted documents

cc: Ms. Delane Spencer
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(w/o enclosures)